

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Revision No. 3044 of 2006 (O&M)
Date of Decision: August 20,2007

Mohinder Singh

.....Petitioner

Versus

Sucha Singh & others

.....Respondents

Coram: Hon'ble Mr.Justice Rajesh Bindal

Present: Mr.Karamvir Singh,Advocate for the petitioner.
Mr.B.R.Mahajan, Advocate for the respondents

Rajesh Bindal, J.

The challenge in the present petition is to the order passed by the Civil Judge (Junior Division) Amritsar whereby the application of the petitioner filed under Section 65 of the Evidence Act for leading secondary evidence to prove Will dated 11.12.1986 stands dismissed on the ground that once it is found that original Will is lost and cannot be found, a photocopy of certified copy whereof is not admissible.

Learned counsel for the petitioner submits that he had produced the will in original in earlier suit filed by petitioner against Basant Singh, co-defendant in the suit out of which the present revision arises. The other suit was filed on October 21,1987, much prior to the filing of the present suit. The present petitioner had produced the original will in evidence there and after the decision of the suit, a certified copy of the same was kept in judicial record and original was taken back. It is further submitted that after the petitioner had got the original will from the Court record, the same was lost and the information to that effect was furnished to the Police vide DDR No. 13 dated 7.9.1993 at Police Post Baba Bakala, Amritsar. Learned counsel for the petitioner states that the prayer made by the petitioner was rejected only on the ground that he had produced a photocopy of the certified copy lying in the judicial record in earlier suit.

However, it cannot be denied that he is not entitled to produce a copy only in secondary evidence. Loss of the document is explained satisfactorily. Once it is found that the certified copy of the will, in question, is available in judicial record in the earlier suit filed by the petitioner against Basant Singh and further loss of the same is reported to the police on 7.9.1993, much before the filing of the present suit by the respondent against petitioner, I find merit in the contention raised by the petitioner. It cannot be disputed that certified copy of the original could be produced in secondary evidence.

Accordingly, the petition is allowed, the petitioner is permitted to lead secondary evidence to prove certified copy of the will after getting the same from the judicial record in the earlier suit filed by the petitioner.

The petition is disposed of in the manner indicated above.

August 20, 2007
arya

(Rajesh Bindal)
Judge